

Page 8 of 10

Docket No: 10574-002(new); BOYK-100 (old)
Application Serial No. 10/683,601

REMARKS/ARGUMENTS

According to the 10/26/2004 Final Office action, claims 1-8 are pending in this application. Claims 1 and 4-8 were allowed in that Final Office action. The present amendment and arguments are provided with regard to claims 2 and 3.

However, claims 9-13 were added to the application in the September 20, 2004 Amendment/Response. In the 10/26/2004 Final Office action, there is no indication of entry or consideration of these dependent claims. It is Applicant's belief that these claims properly should have been considered, that this consideration was omitted, and that these claims were not treated as they should have been. Accordingly, withdrawal of the finality of the 10/26/2004 Office action is respectfully requested based on the Examiner not having considered claims 9-13. It is requested that claims 9-13 be entered from the September 20, 2004 Amendment/Response, and that these be considered.

Rejection(s) under 35 U.S.C. § 112, second paragraph

Claim 3 stands rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 3 is amended herein based on the November 4, 2004 teleconference between Examiner Bollinger and Attorney for Applicant. In accordance with the agreement during that teleconference, the recitation of components of the side-accessed front piece is deleted by amendment herein.

Reconsideration and allowance of claim 3 is respectfully requested. No new matter is added by the amendment herein.

Page 9 of 10

Docket No: 10574-002(new); BOYK-100 (old)

Application Serial No. 10/683,601

Rejection(s) under 35 U.S.C. § 102(b)

Claim 2 stands rejected under 35 U.S.C. § 102(b) as being anticipated by Roethel et al., U.S. Patent Application No. US2001/0032860 A1 (" '860 application").

The Examiner has asserted that the '860 application shows a cup dispensing insert for use in a side-accessed front piece for a cup dispensing unit. During the November 4, 2004 telephonic interview, Attorney for Applicant pointed out that "side-access" with regard to a "front piece" as used herein does is clearly distinguishable from the prior art types of cup dispensing units in which access is from the front "side" of a cup dispensing unit. The '860 application provides an example of such a front access unit, in which installation and access for replacement of the cup retaining means 80 (identified as "diaphragm member") is from the front of the unit (see paragraphs 0029 through 0031 of '860 patent).

References to this distinction can be found, among other places, in the specification, page 1, line 26 through page 2, line 2, page 2, line 34 through page 3, line 3 and page 5, lines 15 through 23, as well as the figures and references throughout the specification. While not being limiting as to design, an access port is identified as component 16 in some figures and the specification. Such access port may open to a left side, a right side, a top side, a bottom side, or variants thereof (see the paragraph beginning on line 15 of page 5), but not to the front from which the cups are dispensed (see page 1, line 32 to page 2, line 1). Also, with regard to the specification, it is noted that lines 28 and 29 of page 1 make reference to prior art units being changed out from via the front face of the dispenser apparatus. The type of apparatus depicted in the '860 application falls within this category, i.e., is a "front-access design" (see page 1, line 32 to page 2, line 1). Thus, the use of the term "side access" in the present application clearly is distinguished from the front access approach that is depicted in the '860 application, and from similar front-accessed prior art cup-dispensing devices.

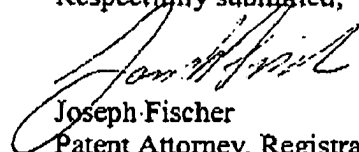
Page 10 of 10

Docket No: 10574-002(new); BOYK-100 (old)
Application Serial No. 10/683,601

Accordingly, it is respectfully asserted that as used herein the term "side-accessed front piece" does not pertain to the rigid frame 50 nor the cup retaining means 80 of the '860 application, nor to other embodiments of a conventional prior art front-accessed cup-dispensing unit. Accordingly, reconsideration and allowance of claim 2 as presented herein (original) is respectfully requested.

The October 26, 2004 Office action indicated that claims 1 and 4 through 8 were allowed, and was silent as to newly added dependent claims 9-13. Allowance of the all claims, 1-13, provided herein is respectfully requested. The Examiner is invited to call the undersigned if clarification is needed on any aspects of this Amendment/Response, or if the Examiner believes a telephonic interview would expedite the prosecution of the subject application to completion.

Respectfully submitted,

 12/8/2004

Joseph Fischer

Patent Attorney, Registration No. 51,210
(Customer No. 29,847)Mailing Address and Phone/Fax numbers:Beusse Brownlee Wolter Mora & Maire, P.A.
390 N. Orange Avenue, Suite 2500
Orlando, FL 32801
Telephone: 407-926-7727
Fax: 407-926-7720